IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA NO.1642 OF 2004
DATE OF DECISION: 30-08-2007

Nand Kishore

.....APPELLANT

VERSUS

Neel Chand and others

.....RESPONDENTS

CORAM:- **HON'BLE MR.JUSTICE HEMANT GUPTA**

PRESENT: Mr. Yogesh Chaudhary, Advocate
for the appellant.

Mr.Arvind Singh, Advocate
for the respondents.

HEMANT GUPTA, J.(Oral)

The defendant is in second appeal aggrieved against the judgment and decree passed by the learned Courts below, whereby the suit for declaration and permanent injunction to the effect that the plaintiffs are owner in possession of land measuring 123 kanals 5 marlas having purchased the same on the basis of sale deed dated 11-12-1978 was decreed.

One Baba Madho Dass chela Baba Puran Dass was in possession of land measuring 246 kanals 10 marlas. Baba Madho Dass died on 3-1-1978. The land was inherited by the defendant-appellant and mutation of inheritance in this respect was sanctioned on the basis of Will. The said Baba Madho Dass was also a big land owner under the provisions of Punjab Security of Land Tenures Act, 1953 and Haryana Ceiling on Land Holdings Act, 1972. The land measuring 106 kanals was declared as surplus

w.e.f. 24-1-1971 and mutation in respect of specific khasra numbers was sanctioned in favour of State on 26-05-1988.

In the sale deed dated 11-12-1978, the defendant had sold half share of land measuring 246 kanals 10 marlas against specific khasra numbers. The dispute arose whether the plaintiffs are owner of half share of land measuring 246 kanals 10 marlas or of land measuring 140 kanals 10 marlas i.e. after excluding the surplus land which was not in the ownership of the defendant on the date of sale. It has been found by both the Courts below that by virtue of the sale deed Ex.P1, the defendant had sold land measuring 123 kanals 5 marls as rented in the sale deed and thus, the plaintiffs are entitled to the declaration sought for.

Learned counsel for the appellant has vehemently argued that the decree passed by the learned First Appellate Court suffers from patent illegality. It is contended that the sale was of a share of a joint land and, therefore, the plaintiffs are not entitled to the declaration and the injunction granted by the First Appellate Court in respect of specific khasra numbers. However, I am unable to agree with the said argument. The defendant was the exclusive owner of land measuring 246 kanals 10 marlas. Out of said land 106 kanals was declared surplus and the specific khasra numbers were taken out of the ownership and possession of the defendant. Therefore, the defendant was owner and in possession of land measuring 140 kanals 10 marlas. As an exclusive owner of the land measuring 140 kanals 10 marlas, he was competent to hand over actual physical possession of land measuring 123 kanals 5 marlas, which was in his possession. Thus, the argument that sale was of a share of joint land is unjustified and the actual possession could not be handed over is not tenable. As a exclusive

owner of the land, the vendor has a right to give actual physical possession of land, which was in his possession.

In view of the above, I do not find any patent illegality or irregularity in the findings recorded by the First Appellate Court, which may give rise to any substantial question of law in the present appeal.

Hence, the appeal is dismissed.

(HEMANT GUPTA)
JUDGE

August 30, 2007
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